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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.               | CONFIRMATION NO.       |
|--|-------------|----------------------|-----------------------------------|------------------------|
| 10/825,492   | 04/15/2004  | James L. Glenn       | WDI 8829US                        | 8562                   |
| 1688 7590 11/01/2007<br>POLSTER, LIEDER, WOODRUFF & LUCCHESI<br>12412 POWERS COURT DRIVE SUITE 200<br>ST. LOUIS, MO 63131-3615 |             |                      | EXAMINER<br>ELOSHWAY, NIKI MARINA |                        |
|  |             |                      | ART UNIT<br>3781                  | PAPER NUMBER           |
|  |             |                      | MAIL DATE<br>11/01/2007           | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/825,492

Applicant(s)

GLENN, JAMES L.

Examiner

Niki M. Eloshway

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3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date 11/13/06

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1 and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Sulpizio (U.S. 6,305,567). Sulpizio teaches a bin having a first wall 122, a second wall 118, a third wall 130 and a fourth wall 126. The flexible material is element 112, the stiffness panel is 136 as shown in figure 8. Sulpizio also teaches that the bag 112 may be made smaller (not as deep) or larger if desired (see col. 10 lines 7-9).

### *Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, 7, 8, 11 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261). Bauernfreund et al. teaches a collapsible bin having first and third wall 20 and second and fourth walls 18. Element 10 is the removable stiffness panel. Bauernfreund et al. does not teach a flexible material attached over the bottom end of the box. Stone teaches that it is known to provide a collapsible bin with a flexible material attached over the bottom end of the box. It would have been obvious to one having ordinary skill in the

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art at the time the invention was made to provide the collapsible bin of Bauernfreund et al. with a flexible material over the bottom end of the box, as taught by Stone, in order to strengthen the bottom and hold the stiffness panel in place in a more secure manner and in order to prevent leakage between the bottom edges and bottom panel.

Regarding claim 11, the modified bin of Bauernfreund et al. discloses the claimed invention except for the plurality of fold lines. Stone teaches that it is known to form a bin with a plurality of vertical fold lines (see figure 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made with a plurality of vertical fold lines, as taught by Stone, in order to allow alternative folding patterns.

5. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261), as applied to claim 1 above, and further in view of Thuma et al. (U.S. 6,588,620). The modified bin of Bauernfreund et al. discloses the claimed invention except for the wicker weave material. Thuma et al. teaches that it is known to form a bin from wicker weave material (see col. 1 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made of wicker weave material, as taught by Thuma et al., in order to give the bin a decorative appearance.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261), as applied to claim 1 above, and further in view of Shea (U.S. 5,638,979). The modified bin of Bauernfreund et al. discloses the claimed invention except for the extruded polymer sheet material. Shea teaches that it is known to form a container from extruded polymer sheet material (see col. 3 lines 37-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made of extruded polymer sheet material, as taught by Shea, in order to give the bin the strength characteristic of such material.

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7. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261), as applied to claim 1 above, and further in view of Ziglar (U.S. 5,964,533). The modified bin of Bauernfreund et al. discloses the claimed invention except for the handles. Ziglar teaches that it is known to form a bin with handles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. with handles, as taught by Ziglar, in order to allow the user to grasp the bin more easily.

8. Claims 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261) and Ziglar (U.S. 5,964,533). Bauernfreund et al. teaches a collapsible bin having first and third wall 20 and second and fourth walls 18. Element 10 is the removable stiffness panel. Bauernfreund et al. does not teach a flexible material attached over the bottom end of the box or the handles. Stone teaches that it is known to provide a collapsible bin with a flexible material attached over the bottom end of the box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the collapsible bin of Bauernfreund et al. with a flexible material over the bottom end of the box, as taught by Stone, in order to strengthen the bottom and hold the stiffness panel in place in a more secure manner.

Ziglar teaches that it is known to form a bin with handles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. with handles, as taught by Ziglar, in order to allow the user to grasp the bin more easily.

Regarding claim 14, the modified bin of Bauernfreund et al. discloses the claimed invention except for the plurality of fold lines. Stone teaches that it is known to form a bin with a plurality of vertical fold lines (see figure 9). It would have been obvious to one having ordinary skill in the art at the

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time the invention was made to provide the modified bin of Bauernfreund et al. made with a plurality of vertical fold lines, as taught by Stone, in order to allow alternative folding patterns.

9. Claims 15-21, 23 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261) and Sheng-Bin (U.S. 6,920,993). Bauernfreund et al. teaches a collapsible bin having first and third wall 20 and second and fourth walls 18. Element 10 is the removable stiffness panel. Bauernfreund et al. does not teach a flexible material attached over the bottom end of the box or the first and second closures. Stone teaches that it is known to provide a collapsible bin with a flexible material attached over the bottom end of the box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the collapsible bin of Bauernfreund et al. with a flexible material over the bottom end of the box, as taught by Stone, in order to strengthen the bottom and hold the stiffness panel in place in a more secure manner.

Sheng-Bin teaches that it is known to form a bin with first and second closures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. with first and second closures of Sheng-Bin, in order to allow access to the cavity via the bottom of the bin.

10. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261) and Sheng-Bin (U.S. 6,920,993), as applied to claim 15 above, and further in view of Thuma et al. (U.S. 6,588,620). The modified bin of Bauernfreund et al. discloses the claimed invention except for the wicker weave material. Thuma et al. teaches that it is known to form a bin from wicker weave material (see col. 1 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made of wicker weave material, as taught by Thuma et al., in order to give the bin a decorative appearance.

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11. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bauernfreund et al. (U.S. 2,485,028) in view of Stone (U.S. 6,224,261), Shea (U.S. 5,638,979), Thuma et al. (U.S. 6,588,620) and Sheng-Bin (U.S. 6,920,993). Bauernfreund et al. does not teach a flexible material attached over the bottom end of the box, the polymer extruded sheet, the wicker weave material or the first and second closures.

Stone teaches that it is known to provide a collapsible bin with a flexible material attached over the bottom end of the box. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the collapsible bin of Bauernfreund et al. with a flexible material over the bottom end of the box, as taught by Stone, in order to strengthen the bottom and hold the stiffness panel in place in a more secure manner.

Thuma et al. teaches that it is known to form a bin from wicker weave material (see col. 1 lines 21-27). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made of wicker weave material, as taught by Thuma et al., in order to give the bin a decorative appearance.

Shea teaches that it is known to form a container from extruded polymer sheet material (see col. 3 lines 37-57). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. made of extruded polymer sheet material, as taught by Shea, in order to give the bin the strength characteristic of such material.

Sheng-Bin teaches that it is known to form a bin with first and second closures. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the modified bin of Bauernfreund et al. with first and second closures of Sheng-Bin, in order to allow access to the cavity via the bottom of the bin.

*Response to Arguments*

12. Applicant's arguments filed July 19, 2007 have been fully considered but they are not persuasive. Applicant states in the response that claims 13 and 15-25 were not rejected in the Office Action mailed September 19, 2006. This is incorrect. Rejections for claims 13 and 15-25 were provided in paragraphs 8-11 on pages 4 and 5 of the Non-Final Office Action mailed September 19, 2006. Claims 13 and 15-25 are not considered allowable.

13. Applicant argues that Sulpizio teaches that the bag is attached to the top of the frame and, therefore, does not meet the limitation that the flexible material is attached over the bottom end of the rectangular box. This is incorrect. Sulpizio specifically states in col. 8 lines 20-21 that "[t]he bag 112 is secured to and extends from the *lower* end of the frame 114 as shown in FIGS. 7 and 9" (*emphasis added*).

14. In response to applicant's argument that there is no suggestion to combine the references of Bauernfreund and Stone, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation for combining the references are found in knowledge generally available to one of ordinary skill in the art.

15. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).



***Conclusion***

16. **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

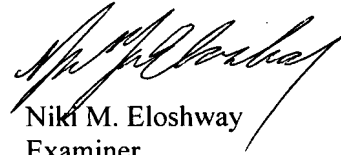
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloschway whose telephone number is 571-272-4538. The examiner can normally be reached Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on 571-272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

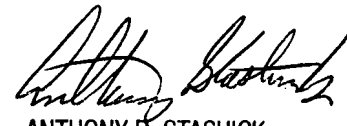
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Niki M. Eloshway  
Examiner  
Art Unit 3781

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